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NEBRASKA ADMINISTRATIVE CODE

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Chapter 1
RULES OF PRACTICE AND PROCEDURE GOVERNING
REINSTATEMENT OF A HEALTH PROFESSIONAL LICENSE

001 GENERAL

001.01 Scope and Application. These rules shall govern practice and procedure before the Boards of Examiners in Medicine and Surgery, Osteopathy, Chiropractic, Dentistry, Pharmacy, Podiatry, Optometry, Physical Therapy, and Embalming and the Director of Health of the Department of Health of the State of Nebraska in proceedings involving a petition for reinstatement of a license to practice medicine and surgery, osteopathy, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, physical therapy, or embalming which license has been suspended, revoked or has had limitations placed thereon. Practice and procedure before such boards and the Director of Health is also governed by the applicable Revised Statutes of Nebraska and the decisions of the Nebraska Supreme Court. In the absence of a specific rule or order of such a board or the Director of Health the statutory rules and practice obtaining in proceedings in the District Courts of the State shall be applicable, excluding prehearing conferences.

001.02 Informal Procedures. Matters which under the law may be acted upon without a hearing may be handled by correspondence.

001.03 Practice. Practice of law before the boards of examiners and the Department is governed by the applicable Revised Statutes of Nebraska and the decisions of the Nebraska Supreme Court. Appearances before the boards of examiners and the Department are also governed by Subdivision 005.07 herein. These rules shall not,

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however, interfere with or prohibit anyone from transacting his own business before the boards of examiners or the Department.

001.04 Correspondence. All correspondence and filings shall be addressed or delivered to the State of Nebraska, Board of Examiners in _____ OR the Director of Health, Nebraska State Office Building, 301 Centennial Mall South, P.O. Box 95007, Lincoln, Nebraska 68509. Each piece of correspondence shall embrace only one subject, should clearly state the subject involved, and shall include the name and address of the sender.

001.05 Office. The Office of the Director of the Bureau of Examining Boards, Department of Health, is located in the southwest corner of the third floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The Office of the Director of the Department of Health is located in the southwest corner of the third floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

001.06 Weekends and Holidays. No official acts shall be required to be performed on any Saturday, Sunday, or legal holiday. When the filing of a pleading or the doing of any act is required on or before a certain date which falls on one of these days, the time for filing said pleading or doing such act shall be extended to the next succeeding working day.

001.07 Rules - Copies. Copies of these rules and regulations will be available for public distribution at the Office of the Director of the Bureau of Examining Boards, Department of Health, the southwest corner of the third floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. They shall be distributed to interested parties free of charge.

001.08 Forms - Copies. Copies of any forms referred to in this body of rules will be made available, upon request, by the Department.

002 DEFINITIONS. As used in these rules of practice and procedure, unless the context to be intelligible or prevent absurdity otherwise requires:

002.01 Board or board of examiners shall mean the Board of Examiners in Medicine and Surgery, Osteopathy, Chiropractic, Dentistry, Pharmacy, Podiatry, Optometry, Physical Therapy, or Embalming.

002.02 Director shall mean the Director of Health of the Department of Health of the State of Nebraska.

002.03 Department shall mean the Department of Health of the State of Nebraska.

002.04 Petitioner shall mean a person filing a petition with a board of examiners or the Director of Health for reinstatement of a license to practice medicine and surgery, osteopathy, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, physical therapy, or embalming which license has been suspended, revoked or has had limitations placed thereon.

002.05 Pleading shall mean any written petition used in any proceeding for reinstatement of licensure before a board of examiners or the Director of Health.

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002.06 Proceeding shall mean all matters formally made in connection with any petition before a board of examiners or the Director of Health for reinstatement of a license.

002.07 Witness shall mean a person appearing at a proceeding before a board of examiners or the Director of Health on behalf of the petitioner or the board of examiners or the Director.

003 PLEADINGS

003.01 Pleadings - Form. All pleadings shall be on forms prescribed by the boards of examiners or the Director of Health, as the case may be, or reasonable facsimiles thereof. In the absence of forms adopted as standard, and in all other instances, all pleadings shall show the venue, for example, "BEFORE THE BOARD OF EXAMINERS IN _____, STATE OF NEBRASKA" or "BEFORE THE DIRECTOR OF HEALTH OF THE STATE OF NEBRASKA", as the case may be; and shall be entitled: "IN THE MATTER OF A PETITION FOR".

003.02 Pleading - Printed. Unless otherwise prescribed, pleadings shall be printed or typewritten on white legal size paper 8 inches wide and 14 inches long, unless otherwise allowed by the board of examiners or the Director of Health for good cause shown, and should be delivered or sent to the office of the Director of the Bureau of Examining Boards or the Director of Health, as the case may be.

003.03 Pleadings - Legible. Pleadings which are not legible and easily readable will not be acceptable.

003.04 Pleadings - Content. All pleadings shall set forth the facts upon which they are based, a request for whatever action is being sought and a reference to the applicable laws, rules and regulations, together with whatever further statement shall be required by provisions of law. Each pleading shall be subscribed in the name of the pleader or by his attorney, in which case the attorney shall also state his address.

003.05 Pleading - Reception of. All petitions or other pleadings filed with the board of examiners or with the Department of Health of the State of Nebraska shall be stamped "Received" and such a stamp shall also state the date such pleading is received by the board of examiners or by the Department. However, no pleading will be considered to be received by the board of examiners or by the Department until such pleading complies with all the applicable provisions of law and with all of these rules and regulations. Unless the party to the proceeding is notified of such non-compliance within seven days of receipt of such pleading by the board or the Department, such act of non-compliance shall be waived by the board or the Department.

003.06 Petition - Denial of. The board of examiners or the Director of Health, as the case may be, may grant or deny, without a hearing or argument, any petition to recommend reinstatement or any petition for reinstatement respectively when the petitioner has been afforded a hearing or an opportunity for a hearing within a period of two years immediately preceding the filling of such petition.

004 PROCEEDING FOR REINSTATEMENT OF LICENSE

004.01 Parties. The only parties to a proceeding before the board of examiners or the Director of Health involving a petition for recommendation for reinstatement or for reinstatement respectively of a license are the petitioner for the same and the department.

004.02 Submission of Petition. Each petition for reinstatement shall state the petitioner's full name and current address; date of birth; the type of license, its assigned number and date of issuance thereof; whether the license was suspended, revoked or had limitations placed thereon, the reasons therefor and the date such suspension, revocation or limitation became effective; the petitioner's occupation or activity since the disciplinary action went into effect; and what other states the petitioner is currently licensed in, if any. The petition, except in cases in which the disciplinary measure was imposed for nonpayment of license renewal fees, shall be accompanied by at least two verified recommendations from practitioners of the profession of the petitioner licensed in the State of Nebraska and by at least two recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary measure was imposed. Each petition shall be subscribed in the name of the petitioner or by his attorney in which case the attorney shall also state his address. The petition shall be accompanied by the requisite information and necessary documents, and must be conclusively acted upon by the board of examiners or the Director of Health, as the case may be, within one hundred eighty days after the filing of the properly prepared petition and necessary accompanying documents with the board of directors or the Director of Health, as the case may be.

004.03 Denials. The petition shall be considered at the next meeting of the board of examiners that is held not earlier than thirty days after the petition was filed. No public hearing need be held on the petition if the board of examiners recommends reinstatement of the license. Before the board of examiners or the Director of Health shall deny a petition for recommendation for reinstatement or a petition for reinstatement respectively, it must grant an opportunity for a formal hearing thereon if formally requested by the petitioner. Whenever the board of examiners or the Director of Health shall deny a petition, it shall notify the petitioner for reinstatement that a formal hearing will be held thereon only if said petitioner submits a written request therefor to the board of examiners or the Director of Health, as the case may be, within twenty days of the receipt of the denial.

004.04 Notice of Hearing. If the petitioner formally requests opportunity for a formal public hearing, or if such a hearing is otherwise held, the petitioner shall be given at least thirty (30) days' prior notice thereof by sending a copy of the notice of hearing by means of certified or registered mail directed to the petitioner at his last-known residence or business post-office address as shown by the files or records of the Department of Health or as otherwise known, or by means of personal service by being personally served by any sheriff or constable or by any person especially appointed by the board of examiners. The notice of the formal public hearing shall name the person which shall appear as the petitioner for reinstatement; shall state the time, date, and place of the hearing; and shall state the reason or reasons for the proposed denial of reinstatement.

004.05 Consideration. Evidence in a proceeding involving a petition for reinstatement will ordinarily be received in the following order: (1) Petitioner; (2) Board of examiners or Department; and (3) Rebuttal by Petitioner.

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004.06 Official Record. The board of examiners or the Director of Health, as the case may be, shall prepare an official record in all petitions for reinstatement hearings, including testimony and exhibits, but it shall not transcribe shorthand notes unless requested for the purpose of a rehearing or judicial review, in which event the transcript and record shall be furnished by the board of examiners or the Director of Health upon request and tender of the cost of preparation.

004.07 Disposition. The petitioner for reinstatement of licensure shall be notified of the decision and recommendation of the board of examiners or of the decision and order of the Director of Health by certified or registered mail, return receipt requested, no later than one hundred eighty days after the filing of the properly prepared petition and necessary accompanying documents with the board of examiners or the Director of Health, as the case may be.

005 FORMAL HEARINGS: PROCEDURE, NOTICE, ETC.

005.01 Setting of Hearings. The time and place of each formal hearing shall be set by the board of examiners or the Director of Health within sixty (60) calendar days after any request for a formal public hearing by a petitioner for reinstatement of licensure. Every such formal hearing shall be held no later than ninety (90) days after the request therefor.

005.02 Receipt for Filings. If a receipt for filing of any pleading, account, book, document, or paper is desired, letters of transmittal shall be sent in duplicate. One copy showing date of receipt will be returned to the sender.

005.03 Hearing Examiner. Formal hearings shall be conducted by a hearing examiner. The hearing examiner shall be the chairman of the board of examiners or the Director of Health, as the case may be.

005.04 Continuances. Any petitioner for reinstatement of licensure who desires a continuance shall, immediately upon receipt of notice of hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the board of examiners or the Director of Health in writing, by letter or telegram, of said desire, stating in detail the reasons why such continuance is necessary. Any such petitioner may be required to submit affidavits in support of such request. For good cause shown, the board of examiners or the Director of Health, as the case may be, may grant such a continuance and may at any time order a continuance on its own motion. All requests for continuance shall be filed prior to the hearing involved. Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted on or before the tenth day prior to the date set for hearing. Any such request subsequent to the opening day of any hearing will be considered only if it involves matters unknown to the petitioner applying prior to said date or other facts, the existence of which would prejudice a hearing and the rights of the petitioner.

005.05 Briefs. Any party desiring to submit a brief concerning the matter presented at any formal hearing may do so by indicating such desire at the close of said hearing. The time in which briefs shall be filed and the number of copies required will be fixed at the close of the hearing by the hearing examiner. Submission of briefs may be required by the board of examiners or the Director of Health upon its own motion, or denied in any case.

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005.06 Conduct of Hearing. The hearing examiner will, among other things, open the proceedings; enter into the record the notice of hearing; take appearances; act on pleadings not previously filed; hear the evidence as provided for in Subsection 006 and in the order provided in Subdivision 004.05; rule on motions and objections; cross-examine any witnesses; and close the proceedings.

005.07 Appearances. Any petitioner may appear in his own behalf before the board of examiners or the Director of Health, as the case may be. Any individual may appear on behalf of another only if: (a) he is admitted to practice law before the Nebraska Supreme Court, or (b) he is admitted to practice law before the supreme court of any state and is accompanied by a person admitted to practice law before the Nebraska Supreme Court.

005.08 Oral Argument. Ordinarily opening statements and oral arguments following the close of the presentation of evidence will be permitted only insofar as such statements and arguments relate to the presentation and explanation of evidence. However, the hearing examiner may request or permit policy arguments. The board of examiners or the Director of Health, as the case may be, will hear oral arguments for rehearing where there is a prior request therefor in writing. Unless otherwise ordered by the hearing examiner, oral argument will be limited to twenty minutes by each separate party.

005.09 Rehearing. Motions for rehearing before the board of examiners or the Director of Health shall be filed within ten (10) days after the receipt of the board of examiners' recommendation or the Director of Health's decision.

005.10 Appeals. Appeals to the District Court from any recommendation of the board of examiners or decision of the Director of Health shall follow the statutory requisites set forth in Section 84-917, R.R.S. 1943.

006 EVIDENCE

006.01 Consideration. Evidence will be received in the following order: (1) Petitioner; (2) Board of examiners or Department; and (3) Rebuttal by Petitioner.

006.02 General. The board of examiners or the Director of Health may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. The hearing examiner may exclude evidence which is incompetent, irrelevant, immaterial, cumulative, or unduly repetitious. However, the petitioner for reinstatement of licensure may request that the board of examiners or the Director of Health be bound by the rules of evidence applicable in District Courts by delivering to the board of examiners or the Director of Health, as the case may be, at least three (3) days prior to the holding of such hearing a written request therefor. Such request shall include the petitioner's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the petitioner shall obtain for the hearing. All costs of a formal hearing shall be paid by the party against whom a final decision is rendered.

006.03 Cross-Examination. In the petition for reinstatement of licensure hearing, each party shall have the right of cross-examination of witnesses who testify.

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006.04 Exhibits. When any exhibit consists of three or more pages, each page shall be consecutively numbered at the bottom. Any detailed or complex exhibits consisting of more than three pages or with several distinct parts shall be prefaced with an index.

006.05 Exhibits - Numbered. Each exhibit shall be consecutively marked and numbered.

006.06 Official Files. Any party desiring to introduce into evidence any part or parts of the official files shall obtain copies thereof in advance of the hearing.

006.07 Filing and Serving Exhibits Prior to Hearing. Upon demand by the board of examiners or the Director of Health, any petitioner proposing to introduce exhibits into evidence, especially where detailed or complicated exhibits are to be used, shall furnish copies of the exhibits requested to the board of examiners or the Director of Health, as the case may be, by filing and serving copies of exhibits or other necessary information within a specified time of not less than three (3) days in advance of the hearing in order to enable the board of examiners or the Director of Health to study same and prepare cross-examination with reference thereto. Upon proof of demand to furnish and failure to supply the said exhibit, it will be excluded from the hearing unless good and sufficient reason be shown by the petitioner offering the same for failure to furnish or provide said exhibit to the board of examiners or the Director of Health demanding the same.

006.08 Documents - Relevant Portions. Relevant portions of books, papers, or documents shall be plainly designated and distinguished from all irrelevant portions before the relevant material may be entered into evidence. Where the irrelevant material in the book, paper or document is voluminous so as to encumber the record, the book, paper or document may be marked for identification and the relevant material read into the record. Upon direction of the hearing examiner, a true copy of the relevant matter may be received as an exhibit in place of the original; PROVIDED THAT, copies are delivered to all parties of record and such parties are afforded an opportunity to examine the original from which the same may have been taken.

006.09 Offer of Copies of Exhibits at Hearing. Parties shall furnish accurate copies of all documentary evidence offered at the hearing to the Official Reporter, if any Official Reporter is required by law at such hearing and to the hearing examiner or the petitioner, as the case may be.

006.10 Evidence Outside the Record. Except as provided in Subdivision 006.11 herein, the board of examiners or the Director of Health will not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

006.11 Official Notice. The board of examiners or the Director of Health may take notice of judicially cognizable fact in any proceeding and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties to a proceeding shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the facts so noticed and shall be afforded an opportunity to contest such facts.

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006.12 Evaluation of Evidence. The board of examiners or the Director of Health, as the case may be, may utilize its experience, technical evidence, and specialized knowledge in the evaluation of evidence presented to it.

006.13 Subpoenas. A subpoena requiring the attendance of a witness will be issued by the chairman of the board of examiners or the Director of Health, as the case may be, upon written application of the petitioner, or upon its own motion. Subpoenas for the production of accounts, books, documents, or papers, unless directed by the board of examiners or the Director of Health on its own motion, will be issued only upon application in writing by a petitioner stating specifically which accounts, books, documents, or papers are required and the facts expected to be proved thereby. All parties directed to produce such accounts, books, documents, or papers shall furnish and deliver the same at the time and place specified by the board of examiners or the Director of Health or to a designated representative of either of the same. A subpoena issued pursuant to this rule shall be served in the manner permitted by law which shall include service by certified or registered mail, return receipt requested. In the case of disobedience to a subpoena, the board of examiners or the Director of Health may invoke the aid of the applicable District Court in requiring the attendance and testimony of witnesses and the production of accounts, books, documents, or papers. Charges for serving a subpoena are to be paid prior to the date set for hearing by the party at whose instance the subpoena is issued.

006.14 Witness Fee. Any witness who is subpoenaed and who responds thereto is entitled to the same fee as is paid for like service in the District Courts of Nebraska. Such fee is to be paid by the party at whose instance the witness's testimony is to be taken. Applications made pursuant to Subdivision 006.13 herein for the attendance of a witness shall be accompanied by a certified check or other sound tender with receipt, payable to the order of the witness, and equal in amount to the witness's traveling fee and a fee for one day's attendance at the hearing. Such certified check, or other sound tender with receipt, shall be tendered the witness when the subpoena is served upon him. Additional fees due the witness, if any, shall be paid at the close of the hearing by the party at whose instance the witness is subpoenaed.

When a subpoena is issued at the request of a board of examiners or the department, the witness shall not be entitled to demand his traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him, he is furnished a statement prepared by the board of examiners or the department advising him of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he will be paid at such rates following his attendance.

SOURCE: Sections 71-155 and 71-161.04 to 71-161.08, R.R.S. 1943

Approved By Attorney General: December 23, 1988

Approved By Governor: March 10, 1989

Filed By Secretary Of State: March 20, 1989

Effective Date: March 25, 1989